

LAW OFFICES

JORDEN HISER

& JOY, P.L.C.

5080 N. 40TH STREET, SUITE 245
PHOENIX, ARIZONA 85018
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

ERIC L. HISER

DIRECT LINE: 480-505-3927
e-mail: chiser@JHJLawyers.com

August 19, 2016

VIA EMAIL blackson.daniel@yahoo.com

VIA EMAIL swanr@mcao.maricopa.gov

Mr. Daniel E. Blackson

Ex. 6 - Personal Privacy

Robert Swan, Esq.
Maricopa County Attorneys Office
222 N. Central Ave., Suite 1100
Phoenix, AZ 85004

Re: In re Hickman's Egg Farm, Permit No. 140062
APHB Docket No. MCAPHB2016-001

Dear Messrs. Blackson and Swan:

On Tuesday, August 16, 2016, the Maricopa County Air Pollution Hearing Board ("Board") commenced hearing on Mr. Blackson's appeal of Non-Title V Air Permit No. 140062. The first day of the hearing considered Mr. Blackson's request that Board members Davidson, Kerr and Leonard recuse themselves, the request by Mr. Swan on behalf of the Maricopa County Air Quality Department ("Department") that the Board find that it lack jurisdiction over this appeal, and Mr. Blackson's request for more time to respond to the jurisdictional argument. After consideration and advisement on the Arizona law governing conflicts of interest and due process, the Board members each indicated on the record that they did not believe a conflict or bias exist that would prevent them from serving impartially. The Board also indicated that it was granting Mr. Blackson's request for more time to prepare to argue the jurisdictional issue raised by Mr. Swan and the Department. The Board also directed us, as Board Counsel, to send both of you a letter providing direction on the issues that the Board wishes to have briefed as part of the argument on jurisdiction and generally indicating how this matter may be most effectively presented to the Board for a fair and just resolution. This letter is issued in response to that directive.

In presenting their arguments about the Board's jurisdiction over this appeal, the Board would like the parties to address the following questions:

1. Does the language of A.R.S. § 49-482, which states "[w]ithin thirty days after notice is given the control officer of approval or denial of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision ... may petition the hearing board ... for a public hearing.... The hearing board, after notice and a public hearing, may sustain, modify, or reverse the action of the control officer" limit the Board's authority to just the "permit, permit revision or conditional order" that was approved or denied?

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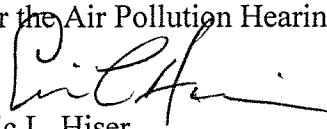
2. Does A.R.S. § 49-480.02, subsection A, expand in any way the rights granted under A.R.S. § 49-482?
3. Does the Regulatory Bill of Rights, A.R.S. § 49-471.01 to .15, expand in any way the rights granted under A.R.S. § 49-482?
4. Does the provision of A.R.S. § 49-480, subsection B, which states that “[p]rocedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by [ADEQ] under sections 49-426 and 49-426.01 and other applicable provisions of this chapter” expand or limit the Board’s jurisdiction in any way?
5. Is there any statutory or regulatory provision, case law or other precedent that addresses whether the Board has jurisdiction to revise or remand back to the Department the underlying permit (as opposed to the permit revision that was the specific action of the Department), based on comments relevant to the underlying operation or permit, but not the specific action taken by the Department?

The Board appreciates the cooperation of both parties in seeking to ensure a fair and equitable hearing on the appeal.

As discussed on Tuesday at the hearing, the next day of the hearing will be August 31, 2016 at 3:00 pm. A meeting notice will be sent shortly. The Board requests that any briefs be delivered to the clerk, Ms. Robinson, by 3:00 pm on August 26, 2016. Please copy the other party and Board counsel (ehiser@jhjlawyers.com) on any submittal. The Board will likely request that each party limit its argument to about 20 minutes each. If the Board finds that it has jurisdiction over all or part of the appeal, a subsequent hearing date will be set to take up the merits.

Please contact me at ehiser@jhjlawyers.com if you have questions or if we need to set up a conference call to discuss the Board’s request. Please remember to copy the other party on any communications with Board counsel.

For the Air Pollution Hearing Board,


Eric L. Hiser
Counsel to the Board

Cc: Jacqueline Robinson, Clerk of the Board